IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-02-2005

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

WRIT PETITION No.4003 OF 1998

Kone Elevators India Limited,
50-55&58, Vanagaram Road,
Chennai-602 102,
rep.by its General Manager (P&A)... Petitioner

-vs-

1.The Assistant Commissioner of Labour II,
Controlling Authority under the
Payment of Gratuity Act,
DMS Complex,
Teynampet, Chennai-600 006.

2.The Deputy Commissioner of Labour (Appeal),
DMS Complex,
Teynampet, Chennai-600 006.

3.M.S.Rajaraman ... Respondents

For petitioner : Mr.S.Ravindran
M/s.T.S.Gopalan & Co.

For respondents 1 & 2: Mr.P.S.Jayakumar,
Govt.Advocate.

For respondent 3 : No appearance

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the 2nd respondent in P.G.A.No.28/97 and quash the order dated 05.12.1997, and confirm the order of the 1st respondent, dated 11.07.1997 in PG Case No.42/96.

O R D E R

Heard Mr.S.Ravindaran, learned counsel appearing for the petitioner, and Mr.P.S.Jayakumar, learned Government Advocate, appearing for the respondents 1 and 2.

2. This matter relates to the question of computation for payment of gratuity, as contemplated under Section 4 of the Payment of Gratuity Act,1972. The management had initially

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calculated and paid the amount for thirty years. Subsequently, an application was filed by the workman, stating that computation should be made for 31 years, as he had put in 31 years of service. During pendency of that application, further amount was paid.

3. However, the contention of the workman that calculation should be made by dividing the monthly salary with 22 and not 26 was not accepted by the original authority. Such a contention had been made by the workmen, on the footing that Saturday was also a non-working day and, therefore, the calculation should be done on the basis of actual working days in a month, namely, on an average of 22 days per month. The aforesaid submission, though was not accepted by the original authority, was accepted by the appellate authority.

4.Learned counsel for the petitioner has submitted, that in view of the clear provision contained in Section 4 of the Payment of Gratuity Act, 1972, there is no scope for coming to a conclusion that the monthly wages are to be divided by 22. For the aforesaid purpose, he has placed reliance on Section 4 (2) (Explanation).

5. It is only necessary to extract the said explanation hereunder :

> "Explanation.- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

6. The said explanation makes it clear, that in respect of a monthly rated employee, the 15 days' wages shall be calculated by dividing the monthly rate of wages by 26 and multiplying the quotient by 15. As a matter of fact, it is obvious that such explanation was added by the Legislature, on the basis of the decision of the Supreme Court, reported in 1980 (II) L.L.J. 252 (Shri Digvijay Woollen Mills Ltd. vs. Shri Mahendra Prataprai Buch).

7. It is, of course, true that the workmen were working for 22 days in the particular industry, but, in view of the clear legislative provision, the reasoning given by the appellate authority cannot be accepted. A similar question was decided by the Bombay High Court in 1991 (1) L.L.N. 477 (May and Baker (India) Ltd., Bombay, vs. J.S.Coutinho, National Union of Commercial Employees and others).

8. Following the clear provision contained in Section 4, more particularly the explanation and also following the ratio laid down by the Supreme Court as well as the Bombay High Court, the present Writ Petition is allowed and the order of the appellate authority is quashed. No costs. The amount deposited

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by the petitioner before the first respondent, pursuant to the orders passed by this Court during the pendency of the Writ Petition, shall be refunded.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To
1.The Assistant Commissioner of Labour II,
Controlling Authority under the
Payment of Gratuity Act,
DMS Complex,
Teynampet, Chennai-600 006.

2.The Deputy Commissioner of Labour (Appeal),
DMS Complex,
Teynampet, Chennai-600 006.

+ 1 CC to M/s.Gopalan & Co. Advocate SR NO 4887

+ 1 CC to Govt. Pleader SR NO 4921

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